

# **A G E N D A**

## **REGULAR MEETING**

### **OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY FOR THE SEAL BEACH REDEVELOPMENT AGENCY**

***Tuesday ~ February 5, 2013 ~ 5:30 p.m.***

City Hall Conference Room  
211 Eighth Street  
Seal Beach, California

#### **BOARD MEMBERS:**

City of Seal Beach	Jill R. Ingram Alayna Hoang
OC Board of Supervisors	Michael P. Levitt Gordon A. Shanks
OC Department of Education	Patricia L. Meyer
CA Community College District	Andy Dunn
Special District	(To be determined)

***Next Oversight Board Resolution: Number OB13-01***

This Agenda contains a brief general description of each item to be considered. No action or discussion shall be taken on any item not appearing on the agenda, except as otherwise provided by law. Supporting documents, including agenda staff reports, and any public writings distributed to at least a majority of the Oversight Board regarding any item on this agenda, are available for review at the Seal Beach City Hall in the City Clerk's Office located at 211 Eighth Street, Seal Beach, California, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. or contact the City Clerk, at ☎ (562) 431-2527.

In compliance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call the City Clerk's office at ☎ (562) 431-2527 at least 48 hours prior to the meeting.

## **CALL TO ORDER**

## **PLEDGE OF ALLEGIANCE**

## **COUNCIL ROLL CALL**

## **ORAL COMMUNICATIONS**

At this time members of the public may address the Oversight Board regarding any items on this agenda. Pursuant to the Brown Act, the Board cannot discuss or take action on any items not on the agenda unless authorized by law. Those members of the public wishing to speak are asked to come forward and state their name for the record. All speakers will be limited to a period of 3 minutes.

## **BUSINESS MATTERS**

1. **Minutes of the Oversight Board meeting of January 8, 2013** – Approve by minute order.
2. **Reconsideration of Marina Drive Storm Drain Project No. SD1201** – Reconsider the adoption of Resolution No. OB12-10, and, based upon new evidence, adopt **Resolution No. OB13-01** approving contracts for the final stages of the Marina Drive Storm Drain Project No. SD1201.

## **ADJOURNMENT**

Next regular meeting scheduled for March 5, 2013 at 5:30 p.m.

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
TO THE SEAL BEACH REDEVELOPMENT AGENCY**

**AGENDA STAFF REPORT**

DATE: February 5, 2013  
TO: Oversight Board Members  
FROM: Sean P. Crumby, Staff Member  
SUBJECT: **MINUTES OF THE OVERSIGHT BOARD**

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**SUMMARY OF REQUEST**

Approve the minutes for the Oversight Board special meeting of January 8, 2013.

**BACKGROUND**

This section does not apply to this item.

**RECOMMENDATION**

Approve the minutes for the Oversight Board special meeting of January 8, 2013.

Attachment:

1. Minutes

Seal Beach California  
January 8, 2013

The Oversight Board for the Successor Agency to the Seal Beach Redevelopment Agency met for the adjourned meeting at 5:30 p.m. in the City Hall Conference room with Chair Shanks calling the meeting to order and Board member Ingram led the Salute to the Flag.

ROLL CALL

Present: Board Members: Alayna Hoang, City of Seal Beach  
Jill R. Ingram, City of Seal Beach  
Michael Levitt, OC Board of Supervisors  
Gordon Shanks, OC Board of Supervisors  
Andy Dunn, CA Community Colleges  
Absent: Board Member: Patricia Meyer, OC Department of Education  
Staff: Sean P. Crumby, Assistant City Manager  
Victoria L. Beatley, Director of Finance  
Jim Basham, Director of Community Development  
Linda Devine, City Clerk/Secretary

ORAL COMMUNICATIONS

Chair Shanks opened oral communications. There were no speakers, Chair Shanks closed oral communications.

BUSINESS MATTERS

ITEM "1" / APPROVE MINUTES / December 11, 2012

Levitt moved, second by Ingram, to approve the minutes as presented.

AYES: Dunn, Hoang, Ingram, Levitt, Shanks  
NOES: None  
ABSENT: Meyer Motion carried

ITEM "2" / RESOLUTION NO. OB12-11 / DUE DILIGENCE REVIEW (DDR)

The Director of Finance state that the purpose of the meeting was to approve the DDR – there was a change to the footer on page 18 (strike the words after \$1,321,384.) and indicated there were no comments submitted.

Dunn moved, second by Ingram, to adopt Resolution No. OB12-11 entitled "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SEAL BEACH REDEVELOPMENT AGENCY APPROVING THE DUE DILIGENCE REVIEW FOR FUND AND ACCOUNT BALANCES OF THE FORMER SEAL BEACH REDEVELOPMENT AGENCY CONDUCTED PURSUANT TO HEALTH AND SAFETY CODE SECTION 34179.5 AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH". (Report prepared by Lance, Soll & Lunghard, LLP – Public Comment Session ended 12/18/12)

AYES: Dunn, Hoang, Ingram, Levitt, Shanks  
NOES: None  
ABSENT: Meyer Motion carried

ADJOURNMENT

With no objections the Chair adjourned the meeting at 5:38 p.m.

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Chair Shanks

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Date Approved

Attested: \_\_\_\_\_  
City Clerk/Board Secretary

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY  
TO THE SEAL BEACH REDEVELOPMENT AGENCY**

**AGENDA STAFF REPORT**

DATE: February 5, 2013

TO: Oversight Board Members

FROM: Victoria L. Beatley, Staff Member

SUBJECT: **RECONSIDERATION OF MARINA DRIVE STORM  
DRAIN PROJECT NO. SD1201**

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**SUMMARY OF REQUEST:**

It is recommended that the Oversight Board for the Successor Agency to the Seal Beach Redevelopment Agency reconsider its adoption of Resolution No. OB 12-10, and, based upon the new evidence presented below, adopt Resolution No. OB 13-01 approving contracts for the final stages of the Marina Drive Storm Drain Project No. SD1201 ("project").

**EXECUTIVE SUMMARY:**

By letter dated January 28, 2013, the state Department of Finance (DOF) objected to the Oversight Board's action approving Resolution No. OB 12-10 regarding the project. Among other errors, the letter erroneously states that DOF denied the project as an enforceable obligation. As noted previously, by letter dated April 27, 2012, DOF approved storm drain improvements in the amount of \$1.8 million dollars as an enforceable obligation for the Recognized Obligation Payment Schedule for the period of July through December, 2012 period (ROPS II, item 14).

The DOF objection fails to consider the following factors:

1. This project was approved as part of the 2008 Master Plan of Drainage.
2. This project was identified in the Redevelopment Agency's "2009-10 – 2013-14 5 Year Implementation Plan.
3. DOF approved storm drain improvements in the amount of \$1.8 million dollars as an enforceable obligation for the Recognized Obligation Payment Schedule for the period of July through December, 2012 period (ROPS II, item 14).
4. In reliance upon DOF's April 27, 2012 determination letter, the Successor Agency has incurred substantial expenditures, both in payments to

- consultants and in staff and attorney costs, to complete the project prior to the rainy season.
5. The project has been delayed due to the need for Coastal Commission review and approval.
  6. Any further delay caused by the DOF may result in damage to persons and property in the area.

## **BACKGROUND AND ANALYSIS:**

The 2008 Master Plan of Drainage Update for Seal Beach identified high priority locations for storm drain improvements. The Seal Beach City Council approved the priority list on November 10, 2008. Due to flooding issues in the area, the highest priority listed is this Project, within the Project Area for the former Redevelopment Agency. The subject area has suffered chronic floods, and staff has implemented a number of flood control measures over the last 10 years. The proposed work is the culmination of such measures. Exhibit G is photographic evidence of a recent flooding incident.

State redevelopment law prior to AB 26 X1 provided that the RDA could pay for the costs associated with the installation of public improvements within the Project Area, such as storm drains. The RDA's 2009-10 – 2013-14 5 Year Implementation Plan specifically identified the improvement and upgrading of public facilities and infrastructure within the Project Area, including drainage facilities. Staff proceeded with all the necessary steps to implement the Project, including hiring PSOMAS to prepare the plans and specifications for the Project.

Upon the dissolution of redevelopment agencies, AB 26 X1 required each successor agency to submit to the oversight board and then to the state Department of Finance a Recognized Obligation Payment Schedule ("ROPS") for each six month period (from January to June and from July to December) listing the successor agency's "enforceable obligations" to be paid during that six month-period. Both this Oversight Board (by Resolution SA12-09) and the California Department of Finance (by letter dated May 27, 2012) approved the costs associated with the installation of this public improvement as an enforceable obligation of the Successor Agency during the ROPS II period (July – December 2012). Thereafter, existing SA funds for the Project were placed into a special storm drain improvement account.

In addition to being within the former RDA Project Area, the project is within the Coastal Zone. Thus, staff had to submit the project to the Coastal Commission for its review prior to installation within the Coastal Zone. Such review may take up to one year. On September 26, 2012, the Coastal Commission finally issued a notice of waiver, which means that the final stages of the Project can now be completed.

The downstream section of this tributary area, the West End Pump Station, was recently updated to receive and adequately convey 10-year storm events. This

current design project will continue the 10-year storm protection upstream to cover the “low-lying” areas in and around Electric Avenue and Marina Avenue.

The scope of work for the Project includes storm drain construction consisting of the installation of reinforced concrete pipes and boxes, catch basins with debris filters, manholes and junction structures. This system will be built to handle future expansion with newer facilities connecting onto this system in the future. Other utility relocations may be necessary to facilitate this new design.

Additional services will be needed during the final stages of the Project. After advertising for competitive bids, the Successor Agency selected Mike Bubalo Construction Co., Inc. as the lowest responsive bidder at \$1,292,953.00. This amount is considerably lower than the engineer's estimate. In addition, the Successor Agency selected PSOMAS (which designed the Project) to provide additional design services and construction management; Casulas Construction Services to review and approve submittals, RFI's and shop drawings, attend field meetings as necessary and provide final As-Built Record Drawings; Casulas for inspection services at an hourly rate of \$65.00; and Associates Soils Engineering, Inc. to provide all materials and soils testing.

Time is of the essence. We have already entered into the rainy season, and any further delay may pose a threat to public health, safety and welfare.

### **RECOMMENDATION:**

It is recommended that the Oversight Board for the Successor Agency to the Seal Beach Redevelopment Agency reconsider Resolution No. OB12-10 and adopt Resolution No. OB3-01 approving contracts for the final stages of Marina Drive Storm Drain Project No. SD1201 (“Project”).

#### **Attachments:**

- A. Resolution No. OB13-01
- B. Resolution No. OB12-10
- C. Agreement – Mike Bubalo Construction Co., Inc.
- D. Agreement – PSOMAS
- E. Agreement – Casulas Construction Services
- F. Agreement – Associated Soils Engineering, Inc.
- G. Photos of flooding
- H. ROPS II
- I. Letter from DOF dated 01/28/13

# ATTACHMENT “A”

Resolution No. OB13-01



## **RESOLUTION NUMBER OB13-01**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SEAL BEACH REDEVELOPMENT AGENCY RECONSIDERING ITS APPROVAL OF RESOLUTION NO. OB12-10 PURSUANT TO CALIFORNIA HELATH & SAFETY CODE SECTION 34163(b) AND APPROVING CONTRACTS APPROVED BY THE SUCCESSOR AGENCY FOR THE FINAL STAGES OF THE MARINA DRIVE STORM DRAIN IMPROVEMENTS PROJECT NO. SD1201 WITH: BUBALO CONSTRUCTION COMPANY; PSOMAS; CASULAS CONSTRUCTION SERVICES; AND ASSOCIATED SOILS ENGINEERING**

### **RECITALS:**

1. By Resolution, this Oversight Board approved the costs associated with the installation of the subject 10 Year storm drain improvements as an enforceable obligation of the Successor Agency to the Seal Beach Redevelopment Agency ("SA" or "Successor Agency") during the ROPS II period (July – December 2012).

2. By letters dated April 27, 2012 and May 27, 2012, the California Department of Finance ("DOF") approved the costs associated with the installation of the subject 10 Year storm drain improvements as an enforceable obligation of the SA during the ROPS II period (July – December 2012).

3. Existing SA funds for the Project have been placed into a special storm drain improvement account.

4. On December 11, 2012 this Oversight Board adopted Resolution OB12-10 to approve contracts for the final stages of the project.

5. By letter dated January 28, 2013, DOF objected to the Oversight Board's approval of Resolution OB12-10 and has returned such action to the Oversight Board for reconsideration.

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SEAL BEACH REDEVELOPMENT AGENCY HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The 2008 Master Plan of Drainage Update for Seal Beach identified high priority locations for storm drain improvements. The Seal Beach City Council approved the priority list on November 10, 2008. Due to flooding issues in the area, the highest priority listed is this Project, within the Project Area for the former Redevelopment Agency. The subject area has suffered chronic floods, and staff has implemented a number of flood control measures over the last 10 years. The proposed work is the culmination of such measures. Exhibit G to the staff report is photographic evidence of a recent flooding incident.

Section 3. State redevelopment law prior to AB 26 X1 provided that the RDA could pay for the costs associated with the installation of public improvements within the Project Area, such as storm drains. The RDA's 2009-10 – 2013-14 5 Year Implementation Plan specifically identified the improvement and upgrading of public facilities and infrastructure within the Project Area, including drainage facilities.

Section 4. Upon the dissolution of redevelopment agencies, AB 26 X1 required each successor agency to submit to the oversight board and then to

DOF a Recognized Obligation Payment Schedule ("ROPS") for each six month period (from January to June and from July to December) listing the successor agency's "enforceable obligations" to be paid during that six month-period. Both this Oversight Board (by Resolution SA12-09) and the California Department of Finance (by letter dated May 27, 2012) approved the costs associated with the installation of this public improvement as an enforceable obligation of the Successor Agency during the ROPS II period (July – December 2012).

Section 5. In addition to being within the former RDA Project Area, the project is within the Coastal Zone. Thus, SA staff submitted the project to the Coastal Commission for its review prior to installation within the Coastal Zone. Such review may take up to one year. On September 26, 2012, the Coastal Commission issued a notice of waiver.

Section 6. Additional services are needed to complete the final stages of the Project. After advertising for competitive bids, the Successor Agency selected Mike Bubalo Construction Co., Inc. as the lowest responsive bidder at \$1,292,953.00, an amount considerably lower than the engineer's estimate, for construction services. In addition, the Successor Agency selected: PSOMAS (which designed the Project) to provide additional design services and construction management; Casulas Construction Services to review and approve submittals, RFI's and shop drawings, attend field meetings as necessary, and provide final As-Built Record Drawings; Casulas for inspection services at an hourly rate of \$65.00; and Associates Soils Engineering, Inc. to provide materials and soils testing.

Section 7. Timely completion of this project is necessary to prevent potential threats to public health, safety and welfare.

Section 8. The DOF objection fails to consider the following factors:

- A. This project was approved as part of the 2008 Master Plan of Drainage.
- B. This project was identified in the Redevelopment Agency's "2009-10 – 2013-14 5 Year Implementation Plan.
- C. DOF approved storm drain improvements in the amount of \$1.8 million dollars as an enforceable obligation for the Recognized Obligation Payment Schedule for the period of July through December, 2012 period (ROPS II, item 14).
- D. In reliance upon DOF's April 27, 2012 determination letter, the Successor Agency has incurred substantial expenditures, both in payments to consultants and in staff and attorney costs, in its efforts to complete the project prior to the rainy season.

Section 9. Based upon the foregoing, the Oversight Board has reconsidered its approval of Resolution OB12-10.

Section 10. Based upon the foregoing, the Oversight Board hereby approves the following actions taken by the SA:

- A. Awarding a contract to Mike Bubalo Construction Inc. in the amount of \$1,292,953 for construction;
- B. Awarding a professional services agreement with PSOMAS for additional design and construction support services;
- C. Awarding a professional services agreement with Casulas Construction Services for inspection services; and

D. Awarding a professional services agreement to Associated Soils Engineering, Inc. for soils and materials testing services.

Section 11. The staff and the Board of the Successor Agency are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable to effectuate this Resolution.

PASSED, APPROVED AND ADOPTED by the Oversight Board at a meeting held on the 5th day of February, 2013.

AYES: Board Members: \_\_\_\_\_

NOES: Board Members: \_\_\_\_\_

ABSENT: Board Members: \_\_\_\_\_

ABSTAIN: Board Members: \_\_\_\_\_

\_\_\_\_\_  
CHAIR, OVERSIGHT BOARD

ATTEST:

\_\_\_\_\_  
SECRETARY, OVERSIGHT BOARD

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF SEAL BEACH )

I, Linda Devine, Secretary to the Oversight Board, hereby certify that the foregoing resolution was duly adopted at a meeting of the Oversight Board, held on the 5th day of February, 2013.

\_\_\_\_\_  
SECRETARY, OVERSIGHT BOARD

# ATTACHMENT “B”

Resolution No. OB12-10

**RESOLUTION NUMBER OB12-10**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SEAL BEACH REDEVELOPMENT AGENCY APPROVING CONTRACTS APPROVED BY THE SUCCESSOR AGENCY FOR THE MARINA DRIVE STORM DRAIN IMPROVEMENTS PROJECT NO. SD1201 WITH: BUBALO CONSTRUCTION COMPANY; PSOMAS; CASULAS CONSTRUCTION SERVICES; AND ASSOCIATED SOILS ENGINEERING**

RECITALS:

A. By Resolution SA12-09, this Oversight Board approved the costs associated with the installation of the subject 10 Year storm rain improvements as an enforceable obligation of the Successor Agency to the Seal Beach Redevelopment Agency ("SA") during the ROPS II period (July – December 2012).

B. By letter dated May 27, 2012 the California Department of Finance approved the costs associated with the installation of the subject 10 Year storm rain improvements as an enforceable obligation of the SA during the ROPS II period (July – December 2012).

C. Thereafter, existing SA funds for the Project were placed into a special storm drain improvement account.

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SEAL BEACH REDEVELOPMENT AGENCY HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Oversight Board hereby approves the following actions taken by the SA:

(1) Awarding a contract to Mike Bubalo Construction Inc. in the amount of \$1,292,953 for construction;

(2) Awarding a professional services agreement with PSOMAS for additional design and construction support services;

(3) Awarding a professional services agreement with Casulas Construction Services for inspection services; and

(4) Awarding a professional services agreement to Associated Soils Engineering, Inc. for soils and materials testing services.

Section 3. The staff and the Board of the Successor Agency are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable to effectuate this Resolution.

PASSED, APPROVED AND ADOPTED by the Oversight Board at a meeting held on the 11th day of December, 2012.

AYES: Board Members: Dunn, Hoang, Nguyen, Lovitt, Shanks

NOES: Board Members: None

ABSENT: Board Members: W. Jones

ABSTAIN: Board Members: None

Gordon S. B.  
CHAIR, OVERSIGHT BOARD

ATTEST:

Linda Devine  
SECRETARY, OVERSIGHT BOARD

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF SEAL BEACH )

I, Linda Devine, Secretary to the Oversight Board, hereby certify that the foregoing resolution was duly adopted at a meeting of the Oversight Board, held on the 11th day of December, 2012.

Linda Devine  
SECRETARY, OVERSIGHT BOARD

ATTACHMENT “C”

Agreement

Mike Bubalo Construction Co., Inc.

PUBLIC WORKS AGREEMENT  
*Marina Drive Storm Drain Improvements*  
*Project No SD1201*

between



Successor Agency to the Seal Beach Redevelopment Agency  
211 - 8th Street  
Seal Beach, CA 90740

&

Mike Bubalo Construction Company, Inc.  
5102 Gayhurst Avenue  
Baldwin Park, CA 91706  
(626) 960-7787  
(626) 960-7897 - FAX

THIS AGREEMENT is made as of December 10, 2012, by and between the Successor Agency to the Seal Beach Redevelopment Agency ("SA"), and Mike Bubalo Construction Company, Inc., a General Contractor ("Contractor").



## RECITALS

- A. The California Department of Finance has approved and determined that the funding for the SA's Marina Drive Storm Drain Improvements Project No. SD 1201 ("Project") is an enforceable obligation of the SA.
- B. Because of its location within the Coastal Zone, the Project requires either a Coastal Development Permit from the California Coastal Commission or a waiver of that requirement from the Commission. On September 26, 2012, the California Coastal Commission issued a waiver of the Coastal Development Permit requirement.
- C. The Board of Directors of the SA has approved the plans and specifications for the Project with respect to design criteria.
- D. Contractor has submitted a bid to SA for the Project dated November 27, 2012 in the amount of \$1,292,953.00 ("Accepted Proposal" hereinafter). The Accepted Proposal is attached hereto as Exhibit G and contains, among other things, provisions defining the Project scope.
- E. On December 10, 2012, the Oversight Board for the SA has reviewed and approved this Agreement. This agreement will not become effective unless and until the approval of the Oversight Board is deemed effective under AB X1 26 and AB 1484.

NOW, THEREFORE, in consideration of performance by the parties of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

## AGREEMENT

### 1. Contractor's Services.

1.1 Scope and Level of Services. For and in consideration of the mutual promises set forth herein, and subject to the terms and conditions set forth in this Agreement, Contractor shall perform and complete in good and workmanlike manner all work ("Work") required by this Agreement and the documents listed in Subsection 1.2 for the Project.

1.2 Contract Documents. The "Contract Documents" that comprise the agreement between the SA and the Contractor are the: Notice Inviting Bids; Instructions to Bidders; Accepted Proposal; Non-Collusion Affidavit; Bid Schedule(s); List of Subcontractors; Contractor's Industrial Safety Record; Contractor's Qualification Statement; Bid Security Forms for Check or Bond; Specifications; General and Special Provisions and documents referenced therein; all addenda as prepared prior to the date of bid opening setting forth any modifications or interpretations of any of said documents; this Agreement; Exhibits attached to this Agreement, including but not limited to the Performance Bond (Exhibit A), Payment Bond (Exhibit B), Workers' Compensation Insurance Certificate (Exhibit C), Insurance Endorsements (Exhibit D), Acknowledgment of Penal and Civil Penalties Concerning Contractor Licensing Laws (Exhibit E), Labor Law Requirements (Exhibit F), Accepted Proposal (Exhibit G); and any and all supplemental agreements executed amending or extending the Work contemplated and that may

be required to complete the Work in a substantial and acceptable manner. These Contract Documents are hereby incorporated into this Agreement.

1.3 The Work shall be performed in accordance with the Plans, Specifications and other Contract Documents. Contractor shall furnish at its own expense all labor, materials, equipment and services necessary therefor, except such labor, materials, equipment and services as are specified in the Contract Documents to be furnished by SA.

1.4 In the event of any material discrepancy between the express provisions of this Agreement and the provisions of the other Contract Documents, the provisions of this Agreement shall prevail.

2. Effective Date. This Agreement is effective as of December 10, 2012 (the "Effective Date"), and shall remain in full force and effect until Contractor has rendered the services required by this Agreement.

3. Payment. For performing and completing the Work in accordance with the Contract Documents, SA shall pay Contractor, in full compensation therefor, the amount of \$1,292,953.00, subject to any additions and deletions pursuant to the terms of the Contract Documents. Said sum shall constitute payment in full for all work performed hereunder, including, without limitation, all labor, materials, equipment, tools and services used or incorporated in the Work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of the Work as specified in the Contract Documents. SA shall make payments to Contractor on account of the contract sum at the time, in the manner, and upon the conditions specified in the Contract Documents. The SA Executive Director may authorize extra work to fund unforeseen conditions up to the amount approved at the time of award by the SA Board of Directors. Payment for additional work in excess of this amount requires prior SA Board of Directors authorization.

4. Contractor's Personnel.

4.1 All Work shall be performed by Contractor or under Contractor's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by state and local law and by the Notice Inviting Bids/Instructions to Bidders to perform such Services, including, without limitation, a City of Seal Beach business license as required by the Seal Beach Municipal Code.

4.2 Contractor shall be responsible for payment of all employees' wages and benefits, and shall comply with all requirements pertaining to employer's liability, Workers' Compensation, unemployment insurance, and Social Security. Contractor shall fully comply with the Workers' Compensation law regarding Contractor and Contractor's employees.

4.3 Contractor shall indemnify and hold harmless SA and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of SA officials, from any and all liabilities, damages, claims, costs and expenses of any nature to the extent arising from Contractor's alleged violations of personnel practices.

4.4 Contractor is, and shall at all times remain as to SA, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of SA or otherwise act as an agent of SA. Neither SA nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents, or employees are in any manner employees of SA. Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold SA harmless from any and all taxes, assessments, penalties, and interest asserted against SA by reason of the work performed pursuant to this Agreement.

4.5 SA shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to SA from Contractor as a result of Contractor's failure to promptly pay to SA any reimbursement or indemnification arising under this Section 4.

5. Indemnification.

5.1 Contractor's Duty. Contractor shall defend, indemnify, and hold the SA, the City of Seal Beach, and their respective officials, officers, employees, volunteers, agents, and those SA agents serving as independent contractors in the role of SA officials (collectively "Indemnitees") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, bid protests, stop notices, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims"), in any manner arising out of or incident to the performance of the Agreement, including without limitation, the payment of all consequential damages and attorneys' fees and other related costs and expenses. Further, Contractor shall appoint competent defense counsel, at Contractor's own cost, expense and risk, to defend any and all such suits, actions or other legal proceedings of every kind arising out of or incident to the performance of the Agreement that may be brought or instituted against Indemnitees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against SA or the other Indemnitees in any such suit, action, or other legal proceeding arising out of or incident to the performance of the Agreement. Contractor shall reimburse the SA and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable.

5.2 Bid Protests. In addition to its obligations pursuant to Section 5.1, Contractor shall reimburse the SA for all attorneys' fees and costs incurred by SA in connection with, arising out of or incident to any bid protest.

5.3 SA's Sole Negligence. Nothing in Section 5.1 shall be construed to require Contractor to indemnify Indemnitees for that portion of any Claim to the extent arising from the sole negligence or willful misconduct of the Indemnitees.

5.4 Nonwaiver of Rights. Indemnitees do not, and shall not, waive any rights that they may possess against Contractor because of the acceptance by SA, or the deposit with SA, of any insurance policy or certificate required pursuant to this Agreement.

5.5 Waiver of Right of Subrogation. Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all claims, losses, and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor.

5.6 Survival. The provisions of this Section 5 shall survive the termination of the Agreement and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

6. Insurance.

6.1 Liability Insurance. Contractor shall procure and maintain in full force and effect for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Contractor, and its agents, representatives, employees and subcontractors. The policy limits set forth below do not act as a limitation upon the amount of indemnification to be provided by Contractor. Contractor shall complete and execute the following documents attached as Exhibits hereto and incorporated herein by this reference:

6.1.1 Exhibit D-1: Additional Insured Endorsement - Commercial General Liability.

6.1.2 Exhibit D-2: Additional Insured Endorsement - Automobile Liability.

6.1.3 Exhibit D-3: Additional Insured Endorsement.

6.2 Minimum Scope of Insurance. Unless otherwise approved by SA, coverage shall be at least as broad as:

6.2.1 Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

6.2.2 Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

6.2.3 Insurance Services Office form number CG 20 10 11 85 (Ed. 11/85) covering Additional Insured - Owners, Lessees or Contractors (Form B).

6.2.4 Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

6.2.5 Professional Liability Insurance. Unless the SA waives in the requirement for professional liability insurance, Contractor shall provide to SA the standard form issued by the carrier.

6.3 Minimum Limits of Insurance. Contractor shall maintain limits no less than:

6.3.1 General Liability: \$2,000,000 per occurrence and in the aggregate for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.

6.3.2 Automobile Liability: \$2,000,000 per occurrence for bodily injury and property damage.

6.3.3 Employer's Liability: \$1,000,000 per occurrence and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.

6.3.4 Professional Liability: \_\_\_\_\_. (Please note that pursuant to Section 6.2.5, the SA may waive the requirement that the Contractor carry professional liability insurance.)

6.4 Deductibles and Self-Insured Retentions. Contractor shall inform SA of any deductibles or self-insured retentions except with respect to any professional liability insurance.

6.5 Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

6.5.1 SA, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of SA officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to SA, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of SA officials which are not also limitations applicable to the named insured.

6.5.2 For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects SA, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of SA officials. Any insurance or self-insurance maintained by SA, their officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of SA officials shall be excess of Contractor's insurance and shall not contribute with it.

6.5.3 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.5.4 Each insurance policy required by this Section 6 shall be endorsed to state that coverage shall not be canceled or materially modified except after 30 days' prior written notice by first class mail has been given to SA.

6.5.5 Each insurance policy, except for any professional liability policy, required by this Section 6 shall expressly waive the insurer's right of subrogation against SA and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of SA or agency officials.

6.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII unless waived in writing by SA's Risk Manager.

6.7 Verification of Coverage. All insurance coverages shall be confirmed by execution of endorsements on forms approved by the SA. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by SA before services commence. As an alternative to SA forms, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

7. Liquidated Damages. Should the Contractor fail to complete the project, or any part thereof, in the time agreed upon in the Contract, the Contractor shall reimburse the SA for the additional expense and damage for each calendar day that the Contract remains uncompleted after the Contract completion date. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the Contract is the per diem rate of \$750 per calendar day. Such amount is hereby agreed upon as liquidated damages for the loss to the SA resulting from the failure of the Contractor to complete the project within the allotted time and to the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is a reasonable amount and is established in lieu of damages that are incapable of calculation at the inception hereof; and this amount is not to be considered in the nature of a penalty. The SA shall have the right to deduct such damages from any amount due, or that may become due to the Contractor, or the amount of such damages shall be due and collectible from the Contractor or the Contractor's Surety. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

8. Suspension. SA may, in writing, order Contractor to suspend all or any part of the Contractor's Services for the convenience of SA or for work stoppages beyond the control of SA or Contractor. A suspension of the Services does not void this Agreement.

9. Notices. Any notices, bills, invoices, or reports authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Contractor's and SA's regular business hours or by facsimile before or during Contractor's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses

heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this Section. All notices shall be addressed as follows:

If to SA:                      Secretary  
                                    Successor Agency to the Seal Beach Redevelopment  
                                    Agency  
                                    211 - 8th Street  
                                    Seal Beach, California 90740  
                                    Telephone: (562) 431-2527  
                                    Fax: (562) 493-9857

With a copy to:  
Sean Crumby  
Successor Agency to the Seal Beach Redevelopment  
Agency  
211 - 8th Street  
Seal Beach, California 90740

If to Contractor:        Mike Bubalo Construction Company, Inc.  
                                    5102 Gayhurst Avenue  
                                    Baldwin Park, CA 91706  
                                    Telephone: (626) 960-7787  
                                    Fax: (626) 960-7897  
                                    Attn: Dave Soren

10. Non-Assignability; Subcontracting. Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder. Any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be null, void and of no effect.

11. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Contractor performs the Services.

12. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by SA of any payment to Contractor constitute or be construed as a waiver by SA of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by SA shall in no way impair or prejudice any right or remedy available to SA with regard to such breach or default.

13. Attorneys' Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including all attorneys' fees incurred in connection therewith.

14. Construction. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who drafted that portion of the Agreement.

15. Entire Agreement. This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Contractor and SA. This Agreement supersedes all prior oral or written negotiations, representations, or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

16. Severability. The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the date first written above.

SUCCESSOR AGENCY TO THE SEAL  
BEACH REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Jill R. Ingram, Executive Director


Attest:

By: \_\_\_\_\_  
Linda Devine, Secretary

Approved as to Form:

By: \_\_\_\_\_  
Quinn M. Barrow, Legal Counsel

CONTRACTOR

By:  \_\_\_\_\_

Name: DAVE SOREM

Title: VP/TRES/SEC



ATTACHMENT “D”

Agreement

PSOMAS

**DESIGN PROFESSIONAL SERVICES AGREEMENT  
FOR MARINA AVENUE STORM DRAIN  
IMPROVEMENTS**

**PROJECT NO SD1201**

between



Successor Agency to the Seal Beach Redevelopment Agency  
211 - 8th Street  
Seal Beach, CA 90740

&

PSOMAS  
3 Hutton Centre Drive, Suite 200  
Santa Ana, CA 92707  
P – 714-751-7373

This Professional Services Agreement ("the Agreement") is made as of December 10, 2012 (the "Effective Date"), by and between PSOMAS ("Consultant"), a Corporation, and the Successor Agency to the Seal Beach Redevelopment Agency ("Agency") (collectively, "the Parties").

## **RECITALS**

A. The California Department of Finance has approved and determined that the funding for the Agency's Marina Drive Storm Drain Improvements Project No. SD 1201 ("Project") is an enforceable obligation of the Agency.

B. Because of its location within the Coastal Zone, the Project requires either a Coastal Development Permit from the California Coastal Commission or a waiver of that requirement from the Commission. On September 26, 2012, the California Coastal Commission issued a waiver of the Coastal Development Permit requirement.

C. Consultant has previously performed storm drain design services in connection with the Project. Agency desires additional design work and construction support services in the manner more fully described in Section 1.

D. Consultant represents that the principal members of its firm are qualified professional engineers and are fully qualified to perform the services contemplated by this Agreement in a good and professional manner; and it desires to perform such services as provided herein.

E. On December 10, 2012, the Oversight Board for the Agency has reviewed and approved this Agreement. This agreement will not become effective unless and until the approval of the Oversight Board is deemed effective under AB X1 26 and AB 1484.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows.

## **AGREEMENT**

### **1.0 Scope of Services**

1.1. Consultant has provided those services ("Design Services") set forth in the attached Exhibit A. Consultant shall provide those additional design services and construction management services ("Additional Services") set forth in the attached Exhibit B.

1.2. Consultant shall perform all services under this Agreement on a timely, regular basis and in a manner reasonably satisfactory to the Agency.

1.3. In performing this Agreement, Consultant shall comply with all applicable provisions of federal, State, and local law.

1.4. As a material inducement to Agency to enter into this Agreement, Consultant hereby represents that it has the experience necessary to undertake the services to be provided. In light of such status and experience, Consultant hereby

covenants that it shall follow the customary professional standards in performing all services.

1.5. By executing this Agreement, Consultant represents that, to the extent required by the standard of practice, Consultant (a) has investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) understands the facilities, difficulties and restrictions attending performance of the services under this Agreement.

## **2.0 Term**

The term of this Agreement shall commence as of the Effective Date and shall continue for 200 days unless previously terminated as provided by this Agreement.

## **3.0 Consultant's Compensation**

Consultant has received \$153,065 for the Design Services performed. Agency will pay Consultant in accordance with the fee schedule set forth in Exhibit C for the Additional Services but in no event will the Agency pay more than \$46,935 for such Additional Services. Consultant will not be compensated for any work performed not specified in the Scope of Services unless the Agency authorizes such work in advance and in writing. The Agency's Executive Director may authorize payment for such work up to a cumulative maximum of \$10,000. Payment for additional work in excess of \$10,000 requires prior Agency Board authorization. Any additional work authorized by the Agency pursuant to this Section will be compensated in accordance with the schedule set forth in Exhibit C.

## **4.0 Method of Payment**

4.1. Consultant shall submit to Agency monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within 15 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. Agency will pay Consultant within 30 days of receiving Consultant's invoice. Agency will not withhold any applicable federal or state payroll and other required taxes, or other authorized deductions from payments made to Consultant.

4.2. Upon receipt of 24 hours' notice from Agency, Consultant shall allow Agency or Agency's agents or representatives to inspect at Consultant's offices during reasonable business hours all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement. Agency's rights under this Section 4.2 shall survive for two years following the termination of this Agreement.

## **5.0 Termination**

5.1. This Agreement may be terminated by Agency, without cause, or by Consultant based on reasonable cause, upon giving the other party written notice thereof not less than thirty 30 days prior to the date of termination.

5.2. This Agreement may be terminated by Agency upon 10 days' notice to Consultant if Consultant fails to provide satisfactory evidence of renewal or replacement of comprehensive general liability insurance as required by this Agreement at least 20 days before the expiration date of the previous policy.

## **6.0 Party Representatives**

6.1. The Agency's Executive Director is the Agency's representative for purposes of this Agreement.

6.2. Anissa Voyiatzes, P.E. is the Consultant's representative for purposes of this Agreement. It is expressly understood that the experience, knowledge, capability, and reputation of Anissa Voyiatzes were a substantial inducement for Agency to enter into this Agreement. Therefore, Anissa Voyiatzes shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. Consultant may not change its representative without the prior written approval of Agency, which approval shall not be unreasonably withheld.

## **7.0 Notices**

7.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To Agency: Successor Agency to the Seal Beach Redevelopment  
Agency  
211 - 8th Street  
Seal Beach, California 90740  
Attn: Executive Director

To Consultant: PSOMAS  
3 Hutton Centre Drive, Suite 200  
Santa Ana, CA 92707  
Attn: Anissa Voyiatzes

7.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **8.0 Independent Contractor**

8.1. Consultant is an independent contractor and not an employee of the Agency or the City of Seal Beach. All services provided pursuant to this Agreement shall be performed by Consultant or under its supervision, and all personnel shall possess the qualifications, permits, and licenses required by State and local law to perform such services, including, without limitation, a City of Seal Beach business license as required by the Seal Beach Municipal Code. Consultant will determine the means, methods, and details of performing the services. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and compliance with the customary professional standards.

8.2. Any additional personnel performing services under this Agreement on behalf of Consultant shall also not be employees of Agency and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

8.3. Consultant shall indemnify and hold harmless the Agency, the City of Seal Beach, and their officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of Agency or City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Agency from Consultant as a result of Consultant's failure to promptly pay to Agency any reimbursement or indemnification arising under this Section 8.

## **9.0 Confidentiality**

Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written authorization by Agency. Agency shall grant such authorization if applicable law requires disclosure. All Agency data shall be returned to Agency upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **10.0 Subcontractors**

No portion of this Agreement shall be subcontracted without the prior written approval of Agency. Consultant is fully responsible to Agency for the performance of any and all subcontractors.

## **11.0 Assignment**

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of Agency. Any purported assignment without such consent shall be void and without effect.

## **12.0 Insurance**

12.1. Liability Insurance. Consultant shall procure and maintain in full force and effect for the duration of this Agreement insurance against claims for injuries to persons or damages to property and professional negligence which may arise from or in connection with the performance of the services hereunder by Consultant, and its agents, representatives, employees and subcontractors.

12.2. Minimum Scope of Insurance. Unless otherwise approved by Agency, coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Professional Liability insurance. Consultant shall provide to Agency the standard form issued by the carrier.

12.3. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence and in the aggregate for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.

Professional Liability: \$1,000,000 per claim/aggregate.

12.4. Deductibles and Self-Insured Retentions. Consultant shall inform Agency of any deductibles or self-insured retentions except with respect to professional liability insurance.

12.5. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

12.5.1. Agency, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of Agency officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no limitations on the scope of protection afforded to Agency, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of Agency officials which are not also limitations applicable to the named insured.

12.5.2. For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects Agency, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of Agency officials. Any insurance or self-insurance maintained by Agency, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of Agency officials shall be excess of Consultant's insurance and shall not contribute with it.

12.5.3. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.5.4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or materially modified except after 30 days' prior written notice by first class mail has been given to Agency, or 10 days' prior written notice by express overnight mail if cancellation is due to nonpayment of premiums.

12.5.5. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against Agency and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of Agency officials.



12.6. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII unless waived in writing by Agency's Risk Manager.

12.7. Verification of Coverage. All insurance coverages shall be confirmed by execution of endorsements on forms approved by Agency. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by Agency before services commence. As an alternative to Agency forms, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

### **13.0 Indemnification, Hold Harmless, and Duty to Defend**

13.1 Indemnity for Design Professional Services. In connection with its design professional services, Consultant shall hold harmless and indemnify Agency, the City of Seal Beach, and their officials, officers, employees, servants, designated volunteers, and those agents serving as independent contractors in the role of Agency or City officials (collectively, "Indemnitees"), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys' fees and costs of defense (collectively, "Claims" hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, subcontractors, or agents in the performance of its design professional services under this Agreement.

13.2 Other Indemnitees. In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) not covered by Subsection 13.1, Consultant shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts or omissions of Consultant or any of its officers, employees, subcontractors, or agents in the performance of this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the Agency, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend Indemnitees in any action or actions filed in connection with any such Damages with counsel of Agency's choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant's duty to defend pursuant to this Subsection 13.2 shall apply independent of any prior, concurrent or subsequent misconduct, negligent acts, errors or omissions of Indemnitees.

### **14.0 Conflict of Interest**

14.1. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services, or which would conflict in any manner with the performance of the services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§ 1090 and 87100) in any decision made by Agency on any matter in connection with which Consultant has been retained.

14.2. Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, Agency shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

14.3. Consultant warrants and maintains that it has no knowledge that any officer or employee of Agency has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to Agency, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this Subsection.

## **15.0 Equal Opportunity**

Consultant affirmatively represents that it is an equal opportunity employer. Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

## **16.0 Labor Certification**

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the services.

## **17.0 Entire Agreement**

This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both Parties.

## **18.0 Severability**

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

## **19.0 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

## **20.0 No Third Party Rights**

No third party shall be deemed to have any rights hereunder against either Party as a result of this Agreement.

## **21.0 Waiver**

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. In no event shall the making by Agency of any payment to Consultant constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

## **22.0 Prohibited Interests**

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Agency has the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Agency, during the term of his or her service with Agency, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

### **23.0 Attorneys' Fees**

If a Party commences any legal, administrative or other action against the other Party arising out of or in connection with this Agreement, the prevailing Party in such action shall be entitled to have and recover from the losing Party all of its attorneys' fees and other costs incurred in connection therewith.

### **24.0 Exhibits**

All exhibits referenced in this Agreement are hereby incorporated into the Agreement as if set forth in full herein. In the event of any discrepancy between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

### **25.0 Corporate Authority**

The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

SUCCESSOR AGENCY TO THE SEAL  
BEACH REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Jill R. Ingram, Executive  
Director

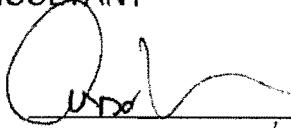
Attest:


By: \_\_\_\_\_  
Linda Devine, Agency  
Secretary

Approved as to Form:

By: \_\_\_\_\_  
Quinn M. Barrow, Agency  
Counsel

CONSULTANT

By:  \_\_\_\_\_  
Name: ANISSA VOYATZES  
Its: VICE PRESIDENT

By:  \_\_\_\_\_  
Name: Harvey R. Gobas  
Its: Vice-President

November 30, 2012

David Spitz, P.E.  
Project Manager  
**CITY OF SEAL BEACH**  
211 8<sup>th</sup> Street  
Seal Beach, CA 90740

Subject: Proposal for the City of Seal Beach  
Marina Drive Storm Drain Improvements CIP No. SD1201  
**BID PHASE/CONSTRUCTION SUPPORT SERVICES**

Dear Mr. Spitz:

It was great to finally complete the Construction Documents for this important project for the City of Seal Beach. At the end of October, the signed mylars were hand delivered to you so that the bidding phase of this project can begin. Throughout the Construction Document/Design phase of this project, we have proceeded with completion of the work without any change order requests. We wanted to let you know some of the key tasks that we completed in order to complete the Construction Documents. Since the Coastal Commission approval process went much smoother when compared to other projects, we used that excess budget to complete the following out of scope work:

- Topographic Surveying of the intersection of 5<sup>TH</sup> Street and Marina Drive (outside of original alignment but used for final alignment).
- Geotechnical borings, material testing, and letter report for Box Culvert bedding requirements/depth to groundwater.
- Plan and profiles drawings for the proposed Box Culvert were designed in the original "straight" alignment and then realigned/modified to turn down 5<sup>TH</sup> Street and then continue up Marina Drive.
- Additional potholing of utilities was performed to determine exact location of utilities crossing the 5<sup>TH</sup> Street/Marina Drive realignment.
- The construction documents were scaled back to meet available funds that the City will receive; this was what we considered as a "Phase One" of this project.

3 Hutton Centre Drive  
Suite 200  
Santa Ana, CA 92707

Tel 714.751.7373  
Fax 714.545.8883  
[www.psomas.com](http://www.psomas.com)

- Due to the large width of the double box culvert configuration and the large angles needed for the box culvert alignment, the junction structures were larger than the typical one available from the Standard Plans for Public Works Construction. A structural engineering subconsultant was brought on board to design the structures to meet roadway loading conditions.
- Extensive utility coordination with Southern California Edison, Southern California Gas Company, and Verizon Communications in order to have their facilities designed for relocation to avoid the Box Culvert construction (still currently underway).

Again, we are pleased to complete this project for you and just wanted to note some of the challenges that we faced through completion of the Construction Documents.

In accordance with the City's Request, we are providing this submittal of our fee proposal for construction assistance services and preparation of a Project Water Quality Management Plan (WQMP). The proposal is based on discussions with the City, an estimated two month bidding phase (November – December) and a five month construction phase (January – May), and the scope of work/tasks contained in Exhibit A dated November 29, 2012.

The total project fee for the Additional Services is estimated to be **\$46,935 which would assume weekly construction meetings for the first three months of the project followed by bi-weekly meetings thereafter, for the bidding phase work including one bid addendum, and for the Utility Coordination work that is still currently underway and may not be completed until during the construction phase.** All fees quoted are time and materials not to exceed as needed unless noted otherwise. This fee includes the cost of our outside direct costs such as printing of documents, mileage, and preparation of record drawing/final mylars.

Our fee proposal should be considered a negotiable offer to perform the services as presented in our proposal. This fee proposal will be valid for 90 calendar days. Should you have any questions regarding this proposal, please do not hesitate to contact me at (714) 481-7902 or [joe.mulvihill@psomas.com](mailto:joe.mulvihill@psomas.com)

Sincerely,

**PSOMAS**



Joseph Mulvihill, P.E.  
Senior Project Manager

**EXHIBIT A**

**TASKS TO BE PERFORMED**

**Marina Drive Storm Drain Improvements CIP No. SD1201**

**SCOPE OF WORK – CONSTRUCTION SUPPORT SERVICES**

**November 30, 2012**

**Project Overview**

In conjunction with our current contract for the Marina Drive Storm Drain Improvements Project, the City desires to use additional engineering consulting services during the bidding phase and construction phase of this project. The work is described in detail below.

**Current Under Contract**

Design services for the Marina Drive Storm Drain Improvements from Corsair Way to 5<sup>th</sup> Street along Electric Avenue.

**Proposed Scope of Work**

**A. Prepare a Project Specific Water Quality Management Plan (WQMP) for the Marina Drive Storm Drain Improvement Project.**

**Description of Work**

Psomas will prepare a WQMP including the following:

- Project Description
- Determine Potential Stormwater Pollutants, Hydrologic Conditions or Concerns, and Post Development Conditions
- Site Description including watershed review and Location Map and Plot Plan
- Best Management Practices
- Long term Responsibilities for Inspection and Maintenance
- Site Plan and Drainage Plan
- Educational Materials



**B. Provide Engineering Support services during the bidding and construction phases of the Marina Drive Storm Drain Improvement Project.**

**Description of Work**

Psomas will provide construction support for the following tasks:

1. Attend Pre-Bid Meeting/Field walk, if City decides to include as part of the bid process.
2. Assist City Staff in the bid process by remaining “on-call” to answer questions from prospective bidders. Prepare answers to bid questions and bid addendum (one), if necessary.
3. Assist City staff with Bid Analysis, if requested.
4. Attend the Pre-Construction Meeting, if requested by the City.
5. Review and respond to materials submitted, shop drawings and requests for information.
6. On-going coordination and project management including coordinating completed and proposed utility work, attending progress meetings, and other requested meetings.
7. Site observations and field meetings with Contractor for plan clarification and questions (Structural engineer – 8 hours allocated for review/site visit).
8. Prepare and assist with Change Orders, as necessary, due to utility relocations.
9. Prepare record drawings (“As-Builts”) of any and all changes recorded during construction by the Contractor.

# ATTACHMENT “E”

## Agreement

### Casulas Construction Services

# **PROFESSIONAL SERVICES AGREEMENT FOR MARINA DRIVE STORM DRAIN IMPROVEMENTS**

## **PROJECT NO SD1201**

Between



Successor Agency to the Seal Beach Redevelopment Agency  
211 - 8th Street  
Seal Beach, CA 90740

&

Casulas Construction Services  
3139 North Pinewood Street  
Orange, CA 92865  
P – 714-425-3104

This Professional Service Agreement ("the Agreement") is made as of December 10, 2012 (the "Effective Date"), by and between Casulas Construction Services ("Consultant"), a Private Company, and the Successor Agency to the Seal Beach Redevelopment Agency ("Agency") (collectively, "the Parties").

## **RECITALS**

A. The California Department of Finance has approved and determined that the funding for the Agency's Marina Drive Storm Drain Improvements Project No. SD 1201 ("Project") is an enforceable obligation of the Agency.

B. Because of its location within the Coastal Zone, the Project requires either a Coastal Development Permit from the California Coastal Commission or a waiver of that requirement from the Commission. On September 26, 2012, the California Coastal Commission issued a waiver of the Coastal Development Permit requirement.

C. Agency desires to engage Consultant to provide Storm Drain Inspection services in the manner set forth herein and more fully described in Section 1 in connection with the Project.

D. Consultant represents that the principal members of its firm are qualified Inspectors and are fully qualified to perform the services contemplated by this Agreement in a good and professional manner; and it desires to perform such services as provided herein.

E. On December 10, 2012, the Oversight Board for the Agency has reviewed and approved this Agreement. This agreement will not become effective unless and until the approval of the Oversight Board is deemed effective under AB X1 26 and AB 1484.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows.

## **AGREEMENT**

### **1.0 Scope of Services**

1.1. Consultant shall provide those services ("Services") set forth in the attached Exhibit A, which is hereby incorporated by this reference. To the extent that there is any conflict between Exhibit A and this Agreement, this Agreement shall control.

1.2. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to Agency.

1.3. In performing this Agreement, Consultant shall comply with all applicable provisions of federal, state, and local law.

1.4. . Consultant will not be compensated for any work performed not specified in the Scope of Services unless the Agency authorizes such work in advance and in writing. The Agency's Executive Director may authorize payment for such work up to a cumulative maximum of \$10,000. Payment for additional work in excess of \$10,000 requires prior City Council authorization.

## **2.0 Term**

This term of this Agreement shall commence as of the Effective Date and shall continue for a term of 200 days unless previously terminated as provided by this Agreement.

## **3.0 Consultant's Compensation**

Agency will pay Consultant in accordance with the hourly rates shown on the fee schedule set forth in Exhibit B for Services but in no event will the Agency pay more than \$50,000. Any additional work authorized by the Agency pursuant to Section 1.4 will be compensated in accordance with the fee schedule set forth in Exhibit A.

## **4.0 Method of Payment**

4.1. Consultant shall submit to Agency monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within 15 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. Agency will pay Consultant within 30 days of receiving Consultant's invoice. Agency will not withhold any applicable federal or state payroll and other required taxes, or other authorized deductions from payments made to Consultant.

4.2. Upon 24-hour notice from Agency, Consultant shall allow Agency or Agency's agents or representatives to inspect at Consultant's offices during reasonable business hours all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement. Agency's rights under this Section 4.2 shall survive for two years following the termination of this Agreement.

## **5.0 Termination**

5.1. This Agreement may be terminated by Agency, without cause, or by Consultant based on reasonable cause, upon giving the other party written notice thereof not less than 30 days prior to the date of termination.

5.2. This Agreement may be terminated by Agency upon 10 days' notice to Consultant if Consultant fails to provide satisfactory evidence of renewal

or replacement of comprehensive general liability insurance as required by this Agreement at least 20 days before the expiration date of the previous policy.

## **6.0 Party Representatives**

6.1. The Agency's Executive Director is the Agency's representative for purposes of this Agreement.

6.2. Tom Casulas is the Consultant's primary representative for purposes of this Agreement.

## **7.0 Notices**

7.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To City: Successor Agency to the Seal Beach  
Redevelopment Agency  
211-8th Street  
Seal Beach, California 90740  
Attn: Executive Director

To Consultant: Casulas Construction Services  
3139 North Pinewood Street  
Orange, CA 92865  
Attn: Tom Casulas

7.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **8.0 Independent Contractor**

8.1. Consultant is an independent contractor and not an employee of the Agency or the City of Seal Beach. All services provided pursuant to this Agreement shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the services. Any additional personnel performing services under this Agreement on behalf of Consultant shall also not be employees of Agency and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income

tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

8.2. Consultant shall indemnify and hold harmless the Agency, the City of Seal Beach and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Agency or City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Agency from Consultant as a result of Consultant's failure to promptly pay to Agency any reimbursement or indemnification arising under this Section.

## **9.0 Subcontractors**

No portion of this Agreement shall be subcontracted without the prior written approval of the Agency. Consultant is fully responsible to City for the performance of any and all subcontractors.

## **10.0 Assignment**

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of Agency. Any purported assignment without such consent shall be void and without effect.

## **11.0 Insurance**

11.1. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that Consultant has secured all insurance required under this Section. Consultant shall furnish Agency with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Agency. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Agency if requested. All certificates and endorsements shall be received and approved by the City before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.2. Consultant shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and, if required by the Agency, (3) Professional Liability. Consultant

shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage and if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Professional Liability: \$1,000,000 per claim/aggregate.

11.3. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Agency to state: (1) coverage shall not be suspended, voided, reduced or canceled except after 30 days prior written notice by certified mail, return receipt requested, has been given to the Agency; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Agency, its directors, officials, officers, (3) coverage shall be primary insurance as respects the Agency, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage and that any insurance or self-insurance maintained by the Agency, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it; (4) for general liability insurance, that the Agency, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (5) for automobile liability, that the Agency, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible.

11.4. All insurance required by this Section shall contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the Agency, its directors, officials, officers, employees, agents, and volunteers.

11.5. Any deductibles or self-insured retentions shall be declared to and approved by the City. Consultant guarantees that, at the option of the Agency, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.



## **12.0 Indemnification, Hold Harmless, and Duty to Defend**

Consultant shall defend, indemnify, and hold the Agency, the City of Seal Beach, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of Agency or City officials (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Consultant, its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of the City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Consultant shall defend Indemnitees, at Consultant's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse Agency and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Agency, its directors, officials, officers, employees, agents or volunteers. All duties of Consultant under this Section shall survive termination of this Agreement.

## **13.0 Equal Opportunity**

Consultant affirmatively represents that it is an equal opportunity employer. Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

## **14.0 Labor Certification**

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

## **15.0 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

## **16.0 Severability**

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

## **17.0 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

## **18.0 No Third Party Rights**

No third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

## **19.0 Waiver**

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

## **20.0 Prohibited Interests; Conflict of Interest**

20.1. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by Agency on any matter in connection with which Consultant has been retained.

20.2. Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift,

percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, Agency shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

20.3. Consultant warrants and maintains that it has no knowledge that any officer or employee of Agency has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to Agency, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

#### **21.0 Attorneys' Fees**

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.

#### **22.0 Exhibits**

All exhibits referenced in this Agreement are hereby incorporated into the Agreement as if set forth in full herein. In the event of any material discrepancy between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

#### **23.0 Corporate Authority**

The person executing this Agreement on behalf of Consultant warrants that he or she is duly authorized to execute this Agreement on behalf of said Party and that by his or her execution, the Consultant is formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

CITY OF SEAL BEACH

By: \_\_\_\_\_  
Jill R. Ingram, Executive  
Director

Attest:

By: \_\_\_\_\_  
Linda Devine, Agency  
Secretary

Approved as to Form:

By: \_\_\_\_\_  
Quinn Barrow, Agency  
Council

CONSULTANT

By: Tom Casulas

Name: TOM CASULAS

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

# ATTACHMENT “F”

## Agreement

Associated Soils Engineering Inc.

# **PROFESSIONAL SERVICES AGREEMENT FOR MARINA DRIVE STORM DRAIN IMPROVEMENTS**

## **PROJECT NO SD1201**

Between



Successor Agency to the Seal Beach Redevelopment Agency  
211 - 8th Street  
Seal Beach, CA 90740

&

Associated Soils Engineering, Inc.  
2860 Walnut Avenue  
Signal Hill, CA 90755  
P – 562-426-7990

This Professional Service Agreement ("the Agreement") is made as of December 10, 2012 (the "Effective Date"), by and between Associated Soils Engineering, Inc. ("Consultant"), a Corporation, and the Successor Agency to the Seal Beach Redevelopment Agency ("Agency") (collectively, "the Parties").

## **RECITALS**

A. The California Department of Finance has approved and determined that the funding for the Agency's Marina Drive Storm Drain Improvements Project No. SD 1201 ("Project") is an enforceable obligation of the Agency.

B. Because of its location within the Coastal Zone, the Project requires either a Coastal Development Permit from the California Coastal Commission or a waiver of that requirement from the Commission. On September 26, 2012, the California Coastal Commission issued a waiver of the Coastal Development Permit requirement.

C. Agency desires to engage Consultant to provide Storm Drain Materials and Soils testing services in the manner set forth herein and more fully described in Section 1 in connection with the Project.

D. Consultant represents that the principal members of its firm are qualified Inspectors and are fully qualified to perform the services contemplated by this Agreement in a good and professional manner; and it desires to perform such services as provided herein.

E. On December 10, 2012, the Oversight Board for the Agency has reviewed and approved this Agreement. This agreement will not become effective unless and until the approval of the Oversight Board is deemed effective under AB X1 26 and AB 1484.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows.

## **AGREEMENT**

### **1.0 Scope of Services**

1.1. Consultant shall provide those services ("Services") set forth in the attached Exhibit A, which is hereby incorporated by this reference. To the extent that there is any conflict between Exhibit A and this Agreement, this Agreement shall control.

1.2. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to Agency.

1.3. In performing this Agreement, Consultant shall comply with all applicable provisions of federal, state, and local law.

1.4. Consultant will not be compensated for any work performed not specified in the Scope of Services unless the Agency authorizes such work in advance and in writing. The Agency's Executive Director may authorize payment for such work up to a cumulative maximum of \$10,000. Payment for additional work in excess of \$10,000 requires prior City Council authorization.

## **2.0 Term**

This term of this Agreement shall commence as of the Effective Date and shall continue for a term of 200 days unless previously terminated as provided by this Agreement.

## **3.0 Consultant's Compensation**

Agency will pay Consultant in accordance with the hourly rates shown on the fee schedule set forth in Exhibit B for Services but in no event will the Agency pay more than \$20,000. Any additional work authorized by the Agency pursuant to Section 1.4 will be compensated in accordance with the fee schedule set forth in Exhibit A.

## **4.0 Method of Payment**

4.1. Consultant shall submit to Agency monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within 15 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. Agency will pay Consultant within 30 days of receiving Consultant's invoice. Agency will not withhold any applicable federal or state payroll and other required taxes, or other authorized deductions from payments made to Consultant.

4.2. Upon 24-hour notice from Agency, Consultant shall allow Agency or Agency's agents or representatives to inspect at Consultant's offices during reasonable business hours all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement. Agency's rights under this Section 4.2 shall survive for two years following the termination of this Agreement.

## **5.0 Termination**

5.1. This Agreement may be terminated by Agency, without cause, or by Consultant based on reasonable cause, upon giving the other party written notice thereof not less than 30 days prior to the date of termination.

5.2. This Agreement may be terminated by Agency upon 10 days' notice to Consultant if Consultant fails to provide satisfactory evidence of renewal



or replacement of comprehensive general liability insurance as required by this Agreement at least 20 days before the expiration date of the previous policy.

## **6.0 Party Representatives**

6.1. The Agency's Executive Director is the Agency's representative for purposes of this Agreement.

6.2. Tom Casulas is the Consultant's primary representative for purposes of this Agreement.

## **7.0 Notices**

7.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To City: Successor Agency to the Seal Beach  
Redevelopment Agency  
211-8th Street  
Seal Beach, California 90740  
Attn: Executive Director

To Consultant: Associated Soils Engineering, Inc.  
2860 Walnut Avenue  
Signal Hill, CA 90755  
Attn: Ted Riddell

7.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **8.0 Independent Contractor**

8.1. Consultant is an independent contractor and not an employee of the Agency or the City of Seal Beach. All services provided pursuant to this Agreement shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the services. Any additional personnel performing services under this Agreement on behalf of Consultant shall also not be employees of Agency and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income

tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

8.2. Consultant shall indemnify and hold harmless the Agency, the City of Seal Beach and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Agency or City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Agency from Consultant as a result of Consultant's failure to promptly pay to Agency any reimbursement or indemnification arising under this Section.

## **9.0 Subcontractors**

No portion of this Agreement shall be subcontracted without the prior written approval of the Agency. Consultant is fully responsible to City for the performance of any and all subcontractors.

## **10.0 Assignment**

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of Agency. Any purported assignment without such consent shall be void and without effect.

## **11.0 Insurance**

11.1. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that Consultant has secured all insurance required under this Section. Consultant shall furnish Agency with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Agency. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Agency if requested. All certificates and endorsements shall be received and approved by the City before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.2. Consultant shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and, if required by the Agency, (3) Professional Liability. Consultant

shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage and if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Professional Liability: \$1,000,000 per claim/aggregate.

11.3. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Agency to state: (1) coverage shall not be suspended, voided, reduced or canceled except after 30 days prior written notice by certified mail, return receipt requested, has been given to the Agency; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Agency, its directors, officials, officers, (3) coverage shall be primary insurance as respects the Agency, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage and that any insurance or self-insurance maintained by the Agency, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it; (4) for general liability insurance, that the Agency, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (5) for automobile liability, that the Agency, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible.

11.4. All insurance required by this Section shall contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the Agency, its directors, officials, officers, employees, agents, and volunteers.

11.5. Any deductibles or self-insured retentions shall be declared to and approved by the City. Consultant guarantees that, at the option of the Agency, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

## **12.0 Indemnification, Hold Harmless, and Duty to Defend**

Consultant shall defend, indemnify, and hold the Agency, the City of Seal Beach, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of Agency or City officials (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Consultant, its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of the City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Consultant shall defend Indemnitees, at Consultant's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse Agency and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Agency, its directors, officials, officers, employees, agents or volunteers. All duties of Consultant under this Section shall survive termination of this Agreement.

## **13.0 Equal Opportunity**

Consultant affirmatively represents that it is an equal opportunity employer. Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

## **14.0 Labor Certification**

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

## **15.0 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

## **16.0 Severability**

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

## **17.0 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

## **18.0 No Third Party Rights**

No third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

## **19.0 Waiver**

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

## **20.0 Prohibited Interests; Conflict of Interest**

20.1. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by Agency on any matter in connection with which Consultant has been retained.

20.2. Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift,

percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, Agency shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

20.3. Consultant warrants and maintains that it has no knowledge that any officer or employee of Agency has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to Agency, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

#### **21.0 Attorneys' Fees**

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.

#### **22.0 Exhibits**

All exhibits referenced in this Agreement are hereby incorporated into the Agreement as if set forth in full herein. In the event of any material discrepancy between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

#### **23.0 Corporate Authority**

The person executing this Agreement on behalf of Consultant warrants that he or she is duly authorized to execute this Agreement on behalf of said Party and that by his or her execution, the Consultant is formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

CITY OF SEAL BEACH

By: \_\_\_\_\_  
Jill R. Ingram, Executive  
Director

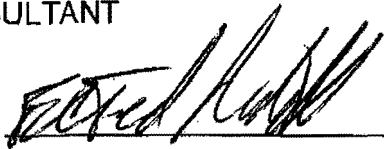
Attest:

By: \_\_\_\_\_  
Linda Devine, Agency  
Secretary

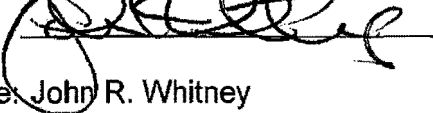
Approved as to Form:

By: \_\_\_\_\_  
Quinn Barrow, Agency  
Council

CONSULTANT

By:   
Name: Edward C. (Ted) Riddell

Its: President

By:   
Name: John R. Whitney

Its: Vice President

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Los Angeles

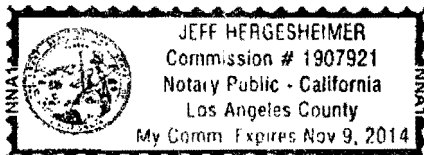
On Nov 30, 2012 before me, Jeff Hergesheimer, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Edward C. Liddell,  
John R. Whitman  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: [Signature]  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: PROFESSIONAL SERVICES AGREEMENT - PROJ No. SD1201

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_ ☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual ☐ Partner — ☐ Limited ☐ General ☐ Individual ☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact ☐ Attorney in Fact

☐ Trustee ☐ Trustee

☐ Guardian or Conservator ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_ ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here





SOILS ENGINEERING, INC.  
Consulting Geotechnical Engineers

2860 WALNUT AVE. - SIGNAL HILL, CALIF. 90755 - PHONE 562/426-7990 - FAX 562/426-1842

November 30, 2012  
Proposal No. 12-179

City of Seal Beach  
211 Eighth Street  
Seal Beach, California 90740

Attention. Mr. David Spitz

Subject. Proposal for Geotechnical Observation and Testing Services During Marina Drive  
Storm Drain Improvements – Project No. SD 1201, Seal Beach, California

Ladies and Gentlemen:

In accordance with your request, Associated Soils Engineering, Inc. (ASE) is pleased to submit this estimate of costs to provide Geotechnical Observation and Testing Services during the excavation and backfill testing phase of the proposed construction of the Marina Drive Storm Drain Improvements. This proposal includes a cost estimate for the field, laboratory and office services required to provide geotechnical observation and testing services. It is understood by ASE that this project is subject to prevailing wage and therefore our estimated costs for field testing are based on ***prevailing wage rates and regulations***, according to the labor laws of the State of California.

#### **CONSTRUCTION OBSERVATION & TESTING**

Based on information provided by you, it is ASE's understanding that it is proposed to provide observation and testing services during the excavation and backfill of the storm drain trench during construction. For the purpose of preparing this proposal, ASE has assumed that the trench backfill compaction operation would require 45 days with our technician being onsite for ½ of each day (4 hrs/day) for observation and testing, laboratory testing incidental to compaction testing and provide a final compaction report at the completion of the operation.

##### **1. Scope of Services**

It will be necessary to provide observation and testing services during excavation and grading to comply with generally accepted specifications. ASE would provide the following services during the mainline utilities and pavement construction phase:

- a. Preconstruction meeting, initial site sampling and consultation, as needed.
- b. Observation and testing during excavation and backfill compaction. For the purpose of this proposal, we have assumed the backfill operation will require 45 trips to the site for our technician at 4 hours per trip.

- c Laboratory work incidental to compaction testing including maximum density of the native soils and CMB.
- d At the completion of grading, ASF will prepare a final report (if required) for the project summarizing the geotechnical services performed

### **Estimated Fees**

The cost of these services depends mainly on the number of required trips to the site, the number of retests necessary due to initial inadequate compaction, the pace and performance of the contractor, the time span needed to complete the entire project and the number of compaction reports required. The assumed hours listed below are based on your estimated number of trips to the site (45 trips @ 4 hrs./trip). Field Technician rates are inclusive of all necessary testing equipment, mileage and transportation. For the purpose of this proposal we have assumed normal workday hours of Monday through Friday and between 7:00 AM and 5:00 PM.

ITEM	RATE	HOURS	COST	EXTENSION
<b>TRENCH BACKFILL OBSERVATION &amp; TESTING</b> 45 trips x 4 hrs./trip				
Project Engineer/Geologist	\$130.00	8	\$1,040.00	
Field Technician	\$95.00	180	\$17,100.00	\$18,140.00
<b>LABORATORY</b>				
Maximum Density – Soil (ASTM D 1557)	\$140.00	4	\$560.00	
Maximum Density – CMB (ASTM D 1557)	\$150.00	2	\$300.00	\$860.00
<b>COMPACTION REPORT (if necessary)</b>				
One Final Compaction Report – Lump Sum	LS		\$1,000.00	\$1,000.00
			<b>TOTAL</b>	<b>\$20,000.00</b>

### **CLOSURE**

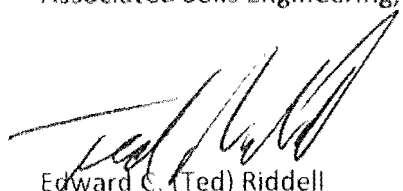
The above estimate for geotechnical services would be invoiced monthly on a time and material basis per the attached Fee Schedule, not to exceed the above estimate without prior approval. Additional services required beyond the above scope would be billed as an extra cost item. Conversely, if the services required are less than anticipated above, billing would be less as we only charge for services performed.



We appreciate the opportunity to submit this proposal. If there are any questions or you need clarification, please contact us at (562) 426-7990.

Very truly yours,

Associated Soils Engineering, Inc.



Edward C. (Ted) Riddell  
President, Principal Geologist

Enclosures: 2012 Professional Fee Schedule

Distribution: (1) Addressee via e-mail: [info@associatedsoils.com](mailto:info@associatedsoils.com)



City of Seal Beach  
Proposal No. P12-179

November 30, 2012  
Page 3



**SOILS ENGINEERING, INC.**  
Consulting Geotechnical Engineers

## JANUARY 2012 FEE SCHEDULE

### ENGINEERING AND TECHNICAL SERVICES

#### (Hourly Rates)

Principal Geotechnical Engineer/Geologist	\$160.00	Pile Inspector (Drilled/Driven/Tieback)	\$95.00
Project Engineer/ Geologist	\$130.00	Registered Deputy Inspector	\$95.00
Staff Engineer/Geologist	\$110.00	Laboratory Technician	\$60.00
Supervising Technician (Lab/Field)	\$90.00	Technical Typist	\$45.00
Field Technician	\$65.00	Technical Illustrator	\$60.00
Field Technician (Prevailing Wage)	\$95.00	Field/Lab Assistant	\$50.00
Field Support Services	\$50.00	Expert Witness (Preparation & Court - 4 hr. min )	\$300.00
Office Services	\$50.00		

### LABORATORY TESTING AND CORING SERVICES

#### (Rate Per Test)

#### CLASSIFICATION AND INDEX TEST

Sand Equivalent (Cal 217 or ASTM D2419)	\$60.00
Atterberg Limit (LL&PL per ASTM D4318-D84)	\$125.00
Shrinkage Factors (ASTM D427)	\$90.00
Sieve Analysis including Hydro (ASTM D422)	\$130.00
Sieve Analysis -- retained 200 mesh	\$75.00
200 Wash	\$40.00
Moisture Content (ASTM D2216)	\$10.00
Moisture Content & Dry Density -- Ring (D2937)	\$15.00
Moisture Content Dry Density -- Shelby Tube	\$25.00
Specific Gravity - Soil	\$100.00

#### STRENGTH TEST

Direct Shear UU (1 point)	\$75.00
Direct Shear UU (3 points)	\$150.00
Direct Shear CD (3 points)	\$190.00
Unconfined Compression	\$235.00
Residual Shear (3 Shear)	\$200.00

#### SOIL CHEMISTRY

Sulfates	\$60.00
Chlorides	\$60.00
pH	\$50.00
Resistivity	\$80.00
Corrosivity Suite (So <sub>4</sub> , Cl, pH, Resistivity)	\$225.00

#### DIAMOND CORING

2" to 6" Diameter	\$50.00
8" to 9" Diameter	\$65.00
Hourly Charge Portal-to-Portal/Standby Time	\$125.00
Minimum Charge	\$250.00

Compression Test 6"x12" Cylinders incl Hold (ASTM C39) each	\$20.00
Sample Pickup each (set of 4) (per hour rate)	\$50.00
Compression Test. 2", 4" and 6" Cores (ASTM C42) each	\$35.00
Mortar Compression	\$20.00
Grout Compression	\$30.00
Masonry Prisms	\$100.00

#### COMPACTION & R-VALUE TEST

Max Density/Opt. Moisture ASTM D1557 (Method A and B)	\$140.00
Max Density/Opt. Moisture ASTM D1557 (Method C)	\$150.00
Max Density/Opt. Moisture California 216	\$150.00
R-Value Natural Soil (Cal 301 or ASTM 2844)	\$210.00
R-Value Cement or Lime treated Soil(Cal 301 or ASTM 2844)	\$225.00
R-Value Aggregate Base (Cal 301 or ASTM 2844)	\$250.00
CBR (ASTM D1883) - Soil	\$270.00
CBR - Base	\$360.00

#### CONSOLIDATION AND EXPANSION TEST

Consolidation ASTM D2435 (Method A)	\$170.00
Consolidation ASTM D2435 (Method B)	\$325.00
Time Rate per Load Increment	\$35.00
Expansion Index (2.5" Diameter Specimen)	\$85.00
Expansion Index (4.0" Diameter Specimen)	\$100.00
Single Load Swell or Collapse Test	\$100.00

#### ASPHALT CONCRETE TEST

Mix Design by Marshall or Stabilometer Method	By Quotation
Field Density for Compacted Mix (Cal 308)	By Quotation
Thickness of Compacted Mix	\$25.00
Theoretical Max. Sp. Gravity & Density of Bituminous Mixtures (ASTM D 2071)	\$110.00
Extraction of Bitumen Mat., % Oil in mix (ASTM D2172, Meth. A)	\$130.00
Maximum Density Determination (Cal 304, 2 pt. Average)	\$170.00
Stability Value (Cal 366)	\$100.00
Extraction of Bitumen Material by Ignition Method	\$170.00

#### AGGREGATE AND BASE COURSE TEST

Durability of Aggregate (Cal 229)	\$200.00
Sieve Analysis, Fines Only (ASTM C136)	\$75.00
Sieve Analysis, Fines and Coarse (ASTM C136) &/or (Cal 202)	\$90.00
Cleaness Value CTM 227	\$115.00
Sp. Gravity, Fine aggregate incl % Absorption (ASTM C128)	\$100.00
Sp. Gravity, Coarse Aggregate incl. % Absorption (ASTM C127)	\$75.00
Abrasion Resistance-LA Rattler, 100-500 rev (ASTM C131)	\$120.00
Centrifuge Kerosene Equivalent (Cal 303)	\$200.00

### BASIS OF CHARGES

**Regular Hours.** Monday to Friday-7 00 AM to 4 00 PM

**Overtime Hours.** 1.5 times regular rate over 8 hours per day, night shifts and Saturdays. Double time regular rate on Sundays, Holidays and work days over 12 hours.

**Minimum Charge.** 2-hour minimum for show-up if not cancelled two (2) hours prior to arrival. 4-hour minimum if inspection is equal to or less than four (4) hours

Charges for all field work will be computed on a portal-to-portal basis with a minimum of two (2) hour show-up

Field work will be billed on a time and material basis unless quoted otherwise

Laboratory test rates do not include sampling time or cost of equipment to secure the samples.

Outside equipment/services, if applicable, will be billed on the basis of our cost plus 15%

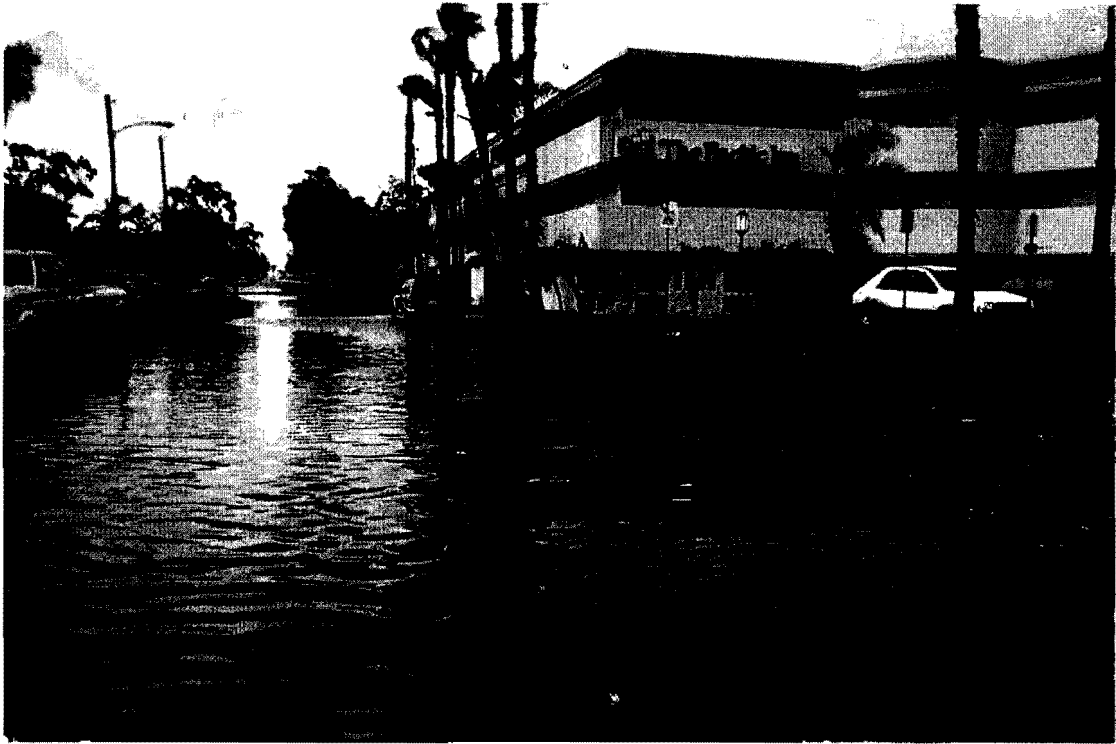
Engineering reports (up to 5 copies) shall be billed on a time and material basis with a minimum charge of \$350.00. Additional copies will be furnished at a cost of \$0.50 per page, plus \$5.00 for binding

Fees charged are for professional and technical services and are due upon presentation. If not paid within thirty (30) days of invoice, they are considered past due and a finance charge of 1 1/2% per month will be added to the unpaid balance (18% annual percentage rate)

# ATTACHMENT “G”

## Photos of Flooding





# ATTACHMENT “H”

## ROPS II

July 1, 2012 – December 31, 2012



City of Seal Beach Successor Agency of the City of Seal Beach

Project Area(s) Riverfront Project Area

Approved by Resolution No. SA12-09

**Recognized Obligation Payment Schedule**  
**Fiscal Period Commencing July 1, 2012 and ending December 31, 2012**  
**(Adopted April 09, 2012)**  
 Per AB 26 - Section 34177(l)(1) and 34177 (l)(3)

	Project Name / Debt Obligation	Payee	Description	Funding Source	Total Due During Fiscal Year							
						July 2012	Aug 2012	Sept 2012	Oct 2012	Nov 2012	Dec 2012	Total
1)	2000 Tax Allocation Bond A	Bank of New York	Bond issue	RPTTF	663,780.00			551,943.00				\$ 551,943.00
2)	2000 Tax Allocation Bond B	Bank of New York	Bond issue	RPTTF	58,975.00				50,063.00			\$ 50,063.00
3)	Contract for legal services	Richards Watson Gershon	Legal counsel - Successor Agency	RPTTF/ACA/LMI	144,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	12,000.00	\$ 72,000.00
4)	Sewer Easement Payment	City of Seal Beach	Acquisition of sewer easement	Reserve balance /RPTTF	448,932.00	448,932.00						\$ 448,932.00
5)	Contract for consulting services	Civic Stone	CDBG and mobilehome park construction	LMI & RPTTF	150,000.00	12,500.00	12,500.00	12,500.00	12,500.00	12,500.00	12,500.00	\$ 75,000.00
6)	Low Mod / Rental Assistance	Seal Beach Shores	Rental Assistance Agreement	LMI & RPTTF	180,000.00						180,000.00	\$ 180,000.00
7)	First Street Parkland	Bay City Partners, LLC	Acquisition of public parkland	Reserve balance /RPTTF	0.00							\$ -
8)	Contract for consulting services	Donald Parker	Financial advisor services	RPTTF/ACA	2,600.00		1,300.00	1,300.00				\$ 2,600.00
9)	Zoeter Field	City National Bank	Capital Improvement lease payment	RPTTF	23,904.00	5,872.00			5,872.00			\$ 11,744.00
10)	2000 Tax Allocation Bond A	Bank of New York	Trustee administration costs	RPTTF	3,700.00						1,823.20	\$ 1,823.20
11)	2000 Tax Allocation Bond B	Bank of New York	Trustee administration costs	RPTTF	3,700.00						1,823.20	\$ 1,823.20
12)	2000 Tax Allocation Bond A	Wildan Financial Services	Bond fiscal services	RPTTF	2,500.00						2,500.00	\$ 2,500.00
13)	2000 Tax Allocation Bond B	Wildan Financial Services	Bond fiscal services	RPTTF	2,500.00						2,500.00	\$ 2,500.00
14)	Storm Drain Improvements	Contractors	10 Year Storm Drain Improvements in Project Area	Reserve balance /RPTTF	1,800,000.00						1,800,000.00	\$ 1,800,000.00
15)	Contract for audit services	Lance Soil & Lunghard	Annual audit	RPTTF/ACA	9,100.00			4,600.00				\$ 4,600.00
16)	Successor Agency Staff/Oversight board	Successor Agency Staff/Oversight board	Administrative costs	RPTTF/ACA	196,920.00	16,410.00	16,410.00	16,410.00	16,410.00	16,410.00	16,410.00	\$ 98,460.00
17)	Overhead	City of Seal Beach	Overhead cost	ACA	86,370.00	7,197.50	7,197.50	7,197.50	7,197.50	7,197.50	7,197.50	\$ 43,185.00
Note: *Items have been amended					\$ 3,776,981.00	\$ 502,911.50	\$ 49,407.50	\$ 605,950.50	\$ 104,042.50	\$ 48,107.50	\$ 2,036,753.90	\$ 3,347,173.40

\* All totals due during fiscal year and payment amounts are projected.

\*Funding sources from the successor agency: (For fiscal 2011-12 only, references to RPTTF could also mean tax increment allocated to the Agency prior to February 1, 2012)

RPTTF - Redevelopment Property Tax Fund

ACA - Successor Agency Administrative Cost Allowance

LMI - Low and Moderate Income Housing Fund

# ATTACHMENT “I”

Letter from DOF

Dated: 01/28/13



**DEPARTMENT OF  
FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 28, 2013

Victoria Beatley, Finance Director  
City of Seal Beach  
211 8<sup>th</sup> Street  
Seal Beach, CA 90740

Dear Ms. Beatley:

Subject: Objection of Oversight Board Action

The City of Seal Beach Successor Agency (Agency) notified the California Department of Finance (Finance) of its December 11, 2012 oversight board (OB) resolution on December 17, 2012. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency's OB Resolution 12-10, related to the following contracts for storm drain improvements, is not permitted:

- Mike Bubalo Construction, Inc.
- PSOMAS
- Casulas Construction Services
- Associated Soils Engineering, Inc.

Per Finance's letter dated April 27, 2012, 'various payees' for storm drain improvements was denied as an enforceable obligation. Additionally, this project was not part of an existing contract or agreement executed prior to June 27, 2011; and pursuant to HSC 34163 (b), an Agency is not permitted to enter into any new contracts.

Therefore, as authorized by HSC section 34179 (h), Finance is returning your OB action to the board for reconsideration.

Please direct inquiries to Nichelle Thomas, Supervisor, or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Alayna Hoang, Finance Manager, City of Seal Beach  
Mr. Frank Davies, Property Tax Manager, Orange County